The Solicitors' Journal

VOL. 91 Saturday, August 9, 1947 No. 30

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CURRENT TOPICS

Statute Law Revision and Consolidation

THE LORD CHANCELLOR, in reply to a question by the MARQUESS OF READING in the Lords on 30th July, said that His Majesty's Government had for some time been gravely concerned by the chaotic condition of the Statute Book. It was no longer lawyers alone who were mainly concerned in ascertaining the law, but a much wider section of the public, comprising central and local government administrators, representatives of employers and workers and officers of public bodies and private associations. He announced that the Government would establish in the Office of the Parliamentary Counsel a separate branch devoting its whole time to the preparation of Consolidation Bills and Codification Bills. They had secured the services of Sir GRANVILLE RAM, K.C., who was retiring from the office of First Parliamentary Counsel, as head of the new branch. The Secretary of State for Scotland and the Lord Advocate were arranging for the appropriate organisation in the Lord Advocate's Department to enable progress to be made with the consolidation of Scottish law and the application to Scotland of Consolidation Bills relating to the United Kingdom or to Great Britain to be undertaken. Continuous effort extending over ten or fifteen years would be necessary. The Statute Law Committee, first appointed by Lord Cairns in 1868, would be reconstituted and its membership would comprise three members of each House of Parliament. The membership of the reconstituted committee would be as follows: Chairman, the Lord Chancellor; Deputy Chairman, Sir Granville Ram, K.C.; the Attorney-General, the Lord Advocate, three Peers (including one Lord of Appeal in Ordinary), three members of the House of Commons, Counsel to the Lord Chairman of Committees, Counsel to Mr. Speaker, First Parliamentary Counsel, Legal Secretary to the Lord Advocate, Permanent Secretary, Treasury, or representative, Permanent Under-Secretary of State, Home Office, or representative, Permanent Under-Secretary of State, Scottish Office, or representative, Permanent Secretary, Lord Chancellor's Department, Secretary of the Cabinet, or representative, King's Printer of Acts of Parliament, and a solicitor. No lawyer will expect more than consolidation from the committee, and the Lord Chancellor's warning that such objects as the simplification of income tax law did not fall within the province of consolidation will not fall on deaf ears. So long as social and economic relations are complicated, the law will continue to be a subject requiring intellectual effort to master it, but consolidation will go a long way towards easing the tasks of lawyers and administrators.

Careers and Talents

AMONG those who have cause to be grateful to The Law Society for their initiative in pressing the repeal of the odious stamp duties which have so long encumbered entrance to the legal profession, solicitors' managing clerks rank high. It is an open secret that many of them are as learned and enthusiastic in the practice and the lore of their own branches of legal work as it is possible to be without having passed any legal examinations, and the knowledge of the reduction in the expenses attending admission will be a spur to many to begin and pursue the study of subjects which had previously been closed to them by lack of means. Many solicitors have in the past taken a kindly interest in their able and ambitious managing clerks, and assisted them both by affording them facilities for study and by financial aid. The managing clerks' associations, both in London and the provinces, have done yeoman work in fostering the studies of their members. If still more managing clerks become admitted to the roll of solicitors in the future the profession will not lose. Another beneficent result of the repeal of the stamp duties will be the added inducement to the more promising boys leaving school to enter the legal profession, whether as articled clerks or otherwise. It will easily be surmised that considerations such as these were present to the minds of the Council when the repeal was first considered as a practical proposition, and the far-sighted reforms which have now been achieved reflect the greatest of credit on the profession itself and on its representative body.

Legal Aid

To the voices clamouring for fulfilment of the Government pledge to implement the Rushcliffe legal aid proposals at an early date is now added that of LORD RUSHCLIFFE himself. In a letter to *The Times* of 1st August he warmly supported the views expressed in *The Times* of 29th July in the letter from the President of The Law Society and the Chairman of the Bar Council (*ante*, p. 413). His committee, he wrote, was very representative, and its report was unanimous. They were impressed not only with the importance but also with the urgency of the matter which was the subject of their inquiry. "A continuation of the present system," he wrote, "amounts to a denial of justice to many persons, often of very limited means." Lord Rushcliffe added that his correspondence showed how great was the disappointment that the recommendations of the committee have, so far, not been implemented.

War Damage Value Payments

WHEN the War Damage (Increase of Value Payments) Order, 1947 (*ante*, p. 135), was discussed in the Commons on 21st March, the CHANCELLOR OF THE EXCHEQUER stated that he hoped to get all these payments made within this calendar year, i.e., before the end of December, 1947. Owing to the heavy work of calculation required, however, some time had necessarily to elapse after Parliamentary approval of the order before payment could begin. The Treasury have now made regulations (S.R. & O., 1947, No. 1571, *infra*, p. 436) fixing the 10th November, 1947, as the date on which the making of payments can be begun. The total amount to be paid out is rather more than £145,000,000, excluding converted value payments, and in all about 150,000 separate payments have to be made. It will be a considerable administrative achievement if the process of liquidation is completed by the end of the year.

World Bill of Rights

THOSE who profess to take a dismal view of human prospects sometimes belittle constitutional guarantees and bills of rights. In these islands we enjoy many liberties which owe their origin to such charters as Magna Carta and the Bill of Rights. To a large extent the individual rights they guaranteed have been preserved, because the written documents were the outward show of an inbred love of liberty. In view of humanity's recent shattering experience it is a serious problem for all of us whether an international Bill of human rights can be sustained by a sufficiently strong public feeling throughout the world to make it a workable reality. In a letter to *The Times* of 26th July, Professor LAUTERPACHT remarked that during the greater part of June a committee of the United Nations Commission on Human Rights were engaged in drafting an International Bill of Human Rights. The present intention, he wrote, was that a Declaration of Human Rights should be ready in 1948 for adoption by the General Assembly. After outlining the difficulties of securing speedy agreement on the application of the most fundamental of the rights of man, in spite of the fact that agreement can be reached on their existence, the professor stated that a mere declaration of principles would be a retrogression. He pleaded that ample time should be left for discussion and study. "It might be greater in historic achievement," he wrote, "if it materialises in 1950 rather than in 1948." It is difficult to see why an early declaration should be regarded as a retrogression, provided that the governments concerned pledge themselves to further study with a view to legislative enactment. The slowness of governments (other than those of this country) to adopt international conventions such as that embodied in the Carriage of Goods by Sea Act, 1924, does not encourage us to hope that there will be agreement on specific legislation as early as 1950. A declaration of principle achieves publicity, and thereby tends to inculcate that love of liberty for ourselves and others without which no laws can have effect.

International Law Association's View

AN impressive plea, signed by LORD PORTER, Mr. JAFFE and Mr. HARVEY MOORE, on behalf of the International Law Association, has been added to that of Professor LAUTERPACHT, for the fullest consideration of an International Bill of Human Rights "not only by the United Nations and by Governments, but also by qualified non-Governmental bodies." In a letter to *The Times* of 31st July they set out the following grounds for their plea: (1) Professor Lauterpacht's "An International Bill of the Rights of Man," published in 1945 by Columbia University, is difficult to obtain. (2) Although the useful United Kingdom draft of June, 1947, is available from the Stationery Office, price 4d., very few copies of the full United Nations Drafting Committee Report have reached this country. Further they state that it is possible that a strong representative non-governmental committee will be set up by the International Law Association which is holding its forty-second conference at Prague from 1st to 6th September. Interested persons are invited to apply for information to the Association at 3 Paper Buildings, Temple, London, E.C.4. It is a subject which from some points of view is complex and from other points of view relatively simple, and while intense preparation is necessary for the drawing up of satisfactory documents, one cannot help feeling that as the catalogue of human rights has been so exhaustively outraged by the Nazis and their sympathisers, promptness in re-asserting those rights with the full weight of a legal declaration may be more desirable than a straining after a meticulous nicety of definition.

Recent Decisions

In *Short and Another* v. *Treasury Commissioners*, on 22nd July (*The Times*, 23rd July), the Court of Appeal (TUCKER, SOMERVELL and EVERSHED, L.JJ.) held that where the Government took over the whole business of Short Brothers (Rochester and Bedford), Ltd., under reg. 78 (1) (*b*) of the Defence (General) Regulations, 1939, and reg. 78 (5) provided that the price to be paid in respect of shares transferred by virtue of an order made under the regulation was to be "not less than the value of those shares as between a willing buyer and a willing seller," the correct method of valuation was to take the prices of the shares ruling on the Stock Exchange at the date of the transfer, and not, as contended by the appellants, to ascertain the value of the undertaking as a whole and then to determine the proportionate value of the separate classes of shares and of individual shares within each class.

In *Franklin and Others* v. *Minister of Town and Country Planning*, on 24th July (*The Times*, 25th July), the House of Lords (LORD THANKERTON, LORD PORTER, LORD UTHWATT, LORD DU PARCQ and LORD NORMAND) held that the Minister had no judicial or quasi-judicial duty imposed upon him by s. 1 of the New Towns Act, 1946, his duties being purely administrative, but the Act prescribed certain methods of discharge of that duty, and in the case of the Stevenage inquiry, which was before the House, the Minister had complied with the statutory directions to appoint a person to hold the public local inquiry and to consider that person's report. The House further held that there was no obligation on the inspector to lead evidence at the inquiry in support of the draft order.

In *James* v. *Minister of Pensions*, on 28th July (*The Times*, 29th July), DENNING, J., held that in the circumstances the court had jurisdiction to grant leave to appeal from a refusal of a pensions appeal tribunal to grant a pension to a widow whose husband had died of Hodgkin's disease, although more than six weeks had elapsed since the date of the decision, because the Pensions Appeal Tribunals Act, 1943, entrusted the court with a reserve power to grant leave to appeal in proper cases, which was not to be cut down by the rules or actions of pensions appeal tribunals. A case of Hodgkin's disease had later been decided in favour of the applicant, and his lordship held that as it was a rare disease of unknown origin the case could only be rightly decided with full medical evidence and a careful direction as to the burden of proof.

On 24th July (*The Times*, 29th July), the Judicial Committee of the Privy Council (LORD SIMON, LORD MACMILLAN, LORD OAKSEY, LORD MORTON OF HENRYTON and LORD MACDERMOTT) held that the Alberta Bill of Rights Act, 1946, was invalid *in toto*. Part I declared certain rights of Alberta citizenship including certain social security rights, and Pt. II provided for the creation of a Board of Credit Commissioners to institute and maintain a system of social credit. The Board held Pt. II to be *ultra vires* and that in view of its relation to the rest of the Act the whole Act was invalid.

In *Glasgow Corporation* v. *Bruce or Nelson*, on 28th July (*The Times*, 30th July), the House of Lords (LORD SIMON, LORD THANKERTON, LORD PORTER, LORD OAKSEY and LORD MACDERMOTT) held that where a conductress on a motor-bus belonging to the appellant corporation was injured in a collision between the motor-bus on which she was working and another motor-bus belonging to the appellant corporation, the doctrine of common employment did not apply to absolve the appellant corporation, because the collision was a risk of the road which might equally well have arisen if the vehicle which ran into the respondent's bus had belonged to somebody else.

CRIMINAL LAW AND PRACTICE

FRESH EVIDENCE IN THE COURT OF CRIMINAL APPEAL

UNTIL the recent case of *R.* v. *Rowland* [1947] W.N. 86, not many people appreciated the full meaning of the provision in s. 9 (*b*) of the Criminal Appeal Act, 1907, giving the Court of Criminal Appeal, "if they think it necessary or expedient in the interest of justice," power if they think fit to order any witnesses who could have been compellable witnesses at the trial to attend and be examined before the court.

The appellant in *R.* v. *Rowland*, having been convicted of murder, proposed calling further witnesses on his appeal, including a man named Ware, who was in prison under sentence and who had purported to confess that he had committed the murder of which the appellant had been convicted. The court refused because (*a*) the mere statement of a man like Ware, even on oath, that the appellant was innocent because he himself was guilty, would not justify the quashing of the conviction; (*b*) such a statement could only begin a new inquiry involving the recalling of many witnesses, and probably the calling of fresh ones, including, possibly, medical witnesses; (*c*) the court would be usurping the functions of a jury if they had allowed Ware to give evidence before them, because in effect they would be trying Ware's guilt as well as re-trying the appellant's guilt, and the finding of the court would be prejudicial to his impartial trial; (*d*) the court had no power to direct a new trial, much less to conduct one themselves.

The court further quoted Darling, J., as having said, in *R.* v. *Mason* (1923), 17 Cr. App. Rep. 160: "The court has to be convinced of very exceptional circumstances before it will reconsider the verdict of a jury in the light of fresh evidence," and held that there were no such exceptional circumstances in the case before them. They concluded by observing that the Home Secretary had all the machinery for conducting such an inquiry as was asked for in the present case. In fact, the confession was subsequently withdrawn, after the Home Secretary had directed an inquiry to be held.

In the case of *R.* v. *Rowland*, the arguments of the court against adducing the fresh evidence of Ware's confession were unanswerable. In one sense the case was exceptional in the respect that, as the court observed in their reasoned judgment, there was, so far as they were aware, no precedent for granting such an application. In another sense there were no exceptional circumstances such as would make it necessary or expedient in the interests of justice to grant the application. One can imagine circumstances in which irrefutable proof of innocence becomes available which was not available at the hearing of the case and which could not have been so available. It is submitted that the court's statement as to assuming a jury's functions was put in terms that were too wide, and must be related strictly to the facts of the case. Having regard to the express power given by the Act to grant an application to call fresh evidence, and the fact that in using their discretion the court are to have regard to whether it is necessary or expedient in the interests of justice, there must be occasions when the court will assume, partially at any rate, the functions of a jury.

There are in fact many cases in the reports in which fresh evidence has been allowed and while it is quite fair to say that there is no precedent for the precise facts of *R.* v. *Rowland* there have, nevertheless, been cases in which the court have had to assume the function of a jury. In *R.* v. *Betridge* (1908), 1 Cr. App. Rep. 236, there was conflicting evidence of identity and the defendant was convicted. On appeal leave was given to call a detective-sergeant who proved that the description given to the police was clearly that of another man. The conviction was quashed. Of course, if a witness could have been called at the trial, leave will rarely be given to call him on appeal. There is abundant authority for this: see, e.g., *R.* v. *Perry and Harvey* (1909), 2 Cr. App. Rep. 89.

One of the most useful of the cases in which fresh evidence was permitted was an Australian case in which application was made under a corresponding statute in Australia to call fresh evidence on a criminal appeal (*R.* v. *Ennor* (1916), V.L.R. 376). Three fellow prisoners with the appellant had refused at the trial to give evidence on his behalf. One of them had a criminal record and it was as a result of a constable's advice that the prisoner had decided not to call him, and another of the three could not be found at the time of the trial. In those special circumstances the conviction was quashed, and, under the peculiar provisions of the Australian statute, a new trial was ordered. It has long been clear that no new trial can be ordered by our Court of Criminal Appeal (*R.* v. *Dyson* [1908] 2 K.B. 454), except in the rare case where the court find that the trial in the court below has been a nullity, when the court may order the appellant to be tried on the indictment (*R.* v. *Crane* [1921] 2 A.C. 299). It follows that in a proportion of the cases in which the Court of Criminal Appeal have to hear fresh evidence, they cannot avoid assuming the functions of a jury to some extent. Perhaps after all the only lesson that can be drawn from the case is that there can be no such rigidity of precedent in criminal appeals as in other branches of the judicature.

COMPANY LAW AND PRACTICE

MEMBERS

SOME little time ago a perhaps somewhat rash assertion was hazarded in this column, and that assertion in due course provoked a protest from a reader.

The assertion on was contained in an article called "Shares in Companies" (*ante*, p. 302) in which the somewhat metaphysical question was discussed of what shares in companies really were. This involved the consideration of s. 25 of the Companies Act, which is the section which says who are members of companies. The first subsection of that section says that the subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members on its register of members, and this provision raises no apparent difficulty.

The second subsection, however, says that every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company; and it was in connection with this provision that an assertion was made that in the reference to a person agreeing to become a member of the company, "agreeing" must mean agreeing with the company, and this is what was challenged by my correspondent. The view which he expressed is that the only occasions on which the words "with the company" need be implied in s. 25 are in cases of allotment. He pointed out that *Lindlar's Case* [1910] 1 Ch. 312 was authority for the proposition that, where the articles contain no clause authorising the directors to reject a transferee, a shareholder may up to the last moment before liquidation, and for the express purpose of escaping liability, transfer his partly-paid shares to a transferee, even though he be a pauper, and may compel the directors to register that transfer provided it be an out and out transfer reserving to the transferor no beneficial right to the shares, direct or indirect. This, he suggested, showed that it was not, at any rate in the case of transfers not subject to any restrictions imposed by the articles, in fact necessary for the company to enter into any agreement with the transferee for the transfer to be effective or for the transferee to become a member of the company.

He further suggested that the operation of a transfer of shares was similar to an ordinary assignment of a chose in action, notice of that assignment being constituted by the

lodging of the transfer with the company for registration. The principle applied in *Lindlar's Case* goes a good way towards establishing this proposition and it is further supported by *Weikersheim's* case (1873), L.R. 8 Ch. 831.

In that case the facts were, so far as is material for the present purpose, that L owned partly paid shares in a company and executed a transfer of those shares to a firm of bankers to secure a loan made by that firm to him. The transfer was also executed by the firm of bankers and was registered with the company. The loan was subsequently repaid by L and the shares retransferred, and that transfer was also registered. Within a year, however, of that registration, the company was ordered to be wound up, and it was held that the firm of bankers was liable to contribute as past members of the company.

The main argument for the firm was that they never became members of the company, on various grounds connected with irregularities in the registration of the various transfers concerned, and in the report of the arguments no mention is made of any point turning on whether or not the firm had agreed to become members of the company. The point is, however, dealt with by both the lords justices.

Sir W. M. James, L.J., after referring to s. 38 of the Companies Act, 1862, which is substantially the same as the section of the present Act, said: "Now, did these gentlemen agree to become members of the company? In my opinion, it is clearly made out that they did agree to become members of the company. It was a transaction connected with a loan of money from the firm of bankers at Vienna to David Leopold Lewis, in which he agreed to transfer and purported to transfer, and they agreed to accept and purported to accept, 1,400 shares in the company. If the document containing this agreement was signed by the appellants or by their authority, then there is evidence that they did become shareholders in the company to the extent of 1,400 shares."

This passage clearly indicates that an agreement sufficient for the purposes of s. 25 may be an agreement not involving the company at all but purely between the transferor and transferee. Similarly, Sir G. Mellish, L.J., said: "The only question of substance is whether these gentlemen did ever really agree to become, and did become, the transferees of these shares. I am of opinion that if bankers lend money to a shareholder, and agree with him to take a certain number of shares in a limited company as security for that loan, and those shares are transferred to them, they become shareholders in the company."

In the face of these remarks and of the decision in *Lindlar's Case*, which decided that unless the articles contained restrictions on transfers the company was purely passive in the matter of a transfer, it would be very difficult to show that the agreement referred to in s. 25 meant agreement with the company and not with the transferor, and the view expressed by my correspondent appears preferable to that expressed in my article.

It should be pointed out at this stage that, even if that view is entirely correct and the company is not required to take any part in any contract or agreement at the time of the transfer, and even where there are no transfer restrictions in the articles, the transfer is not completed merely by being lodged at the office of the company. Though it may not take part in any contract the company by its officers is bound to satisfy itself that the transfer is a valid one, for example, that it is properly executed and properly stamped, and the company cannot be compelled to register the transfer until its officers have had an opportunity of satisfying themselves on these various matters.

If, however, this view expressed by my correspondent is correct there are a number of pecularities about the situation. If you accept as correct that a person can become a member of a company merely by giving the company due notice of the transfer to him of shares in that company, nevertheless, so soon as he has become a member of the company, a contractual relation between him and the company has sprung up, for by s. 20 of the Companies Act, 1929, the effect of the memorandum and articles of association is to bind the company and its members to the same extent as if each member had s gned and sealed them and they contained a covenant by him to observe all the provisions contained in them.

It is also to be observed that in fact the ordinary machinery employed when shares are transferred from one person to another involves considerably more than the two elements specified by s. 25 (2), namely the agreement, on this view between the transferor and the transferee, and being put on the register. The correspondent who raised the point would no doubt say that everything else that was done in the ordinary case of a transfer besides these two elements was merely what was necessary to give the company notice of the assignment.

The question is not likely very often to arise in practice, for it is commonly pretty well understood what takes place when a share is transferred. I think that it is more than possible that s. 25, as it first appears in any Companies Act, was not intended to refer to anything except persons acquiring shares from the company itself, to which the form of words used is exactly apt.

This view is slightly supported by a glance at the notes to s. 25 in "Buckley." Except for a very few incidental references to persons acquiring shares by transfer, the whole of the not inconsiderable notes to that section is taken up with discussing the position of persons obtaining shares direct from a company and not by way of transfer.

This is, after all, what one would be inclined to expect if one considers the history of the Companies Acts. The first provision for granting of limited liability to companies was contained in an Act of 1855, though in 1844 it became possible for large numbers of persons carrying on business such as banking or insurance to get themselves incorporated otherwise than by Special Act or Royal Charter. The distinctive point of these unincorporated bodies (sometimes referred to as companies) was the transferability of their shares, though they operated under a considerable number of disadvantages.

In *R.* v. *Registrar of Joint Stock Companies* [1891] 2 Q.B., at p. 616, Lindley, L.J., said: "I understand by a company —an unincorporated company—some association of members the shares of which are transferable. As distinguished from a partnership I know of nothing else except the transferability of the shares."

The first Companies Act, 1862, then, was concerned as well as providing for incorporation, limited liability, and winding up, to legislate for this transferability of shares. The section about agreeing with the company in that Act is found in the sections dealing with the inception of the company, and subsequent provisions are to be found in Pt. II of that Act dealing with transfer; and this is not unreasonable. You first have to construct your company and provide for its original members joining, and then, having done that, you go on to provide for the transferability of the shares. It was clearly the intention that persons becoming members by transfer should be in exactly the same position as those becoming members by allotment.

This, then, I think, is possibly the explanation of the apparently doubtful meaning of s. 25, though, as I indicated above, the conditions under which valid transfers of shares can take place are well established, and the point is therefore not one of great practical importance. On the whole, however, the view expressed by my correspondent is, I think, correct, and is further supported by the case of *Cuninghame* v. *Glasgow Bank* (1879), 4 App. Cas. 607.

Mr. T. WHITE has been appointed State Solicitor for Laoighis in succession to Mr. Alured Rolleston, who is retiring. Mr. White was admitted a solicitor in 1922, and for the past twenty years has been Deputy State Solicitor for Laoighis.

The President of Eire has appointed Judge WILLIAM G. SHANNON, of the Circuit Court, to be President of the Circuit Court, and Mr. MARTIN J. CONNOLLY, who has been acting as a temporary circuit court judge, to be a judge of the Circuit Court.

A CONVEYANCER'S DIARY

HEIRLOOMS

At a time when so many large estates are being broken up under the influence of high taxation and crippling death duties, the conveyancer finds himself faced with an increasing number of problems connected with this phase of the changing social scene. One of these problems is the disposal of chattels personal which are settled to devolve with settled land, or settled together with land, or upon trusts declared with reference to trusts affecting land. Chattels so settled are popularly (if that is the word to use in a technical context) known as "heirlooms." The nomenclature is not entirely accurate, as the word strictly connotes chattels which attend the inheritance according to the custom of particular places, but the marginal note to s. 67 of the Settled Land Act, 1925, refers to such chattels as heirlooms, and it is with heirlooms in this sense that this article mainly deals.

Section 67 provides as follows:—

"(1) Where personal chattels are settled so as to devolve with settled land, or to devolve therewith as nearly as may be in accordance with the law or practice in force at the date of the settlement, or are settled together with land, or upon trusts declared by reference to the trusts affecting land, a tenant for life of the land may sell the chattels or any of them.

(2) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold.

(3) A sale or purchase of chattels under this section shall not be made without an order of the court."

This is a re-enactment of a similar section in the Settled Land Act, 1882, with certain amendments consequential on the provisions of the Law of Property Act, 1925, which first made it possible to create an entailed interest in personalty. There is, therefore, no lack of authority to show the principles on which the courts have exercised the discretion which the Legislature has conferred upon them in regard to the sale of heirlooms. Very wisely there has been no attempt to crystallise the powers of the court in this respect, and every application is treated strictly on its own merits, but none the less certain broad principles have emerged.

It is for the tenant for life who applies for an order to make out a case for the sale. A good example of the vicissitudes of a tenant for life in this respect is afforded by the case of *Re Hope* [1899] 2 Ch. 679. In that case Lord Francis Hope, a brother of the Duke of Newcastle, became entitled as tenant for life of very large estates settled in strict settlement by the will of his grandmother. The income of these estates, together with certain personal estate which was liable to be laid out in land and settled as land, was £13,000 a year, and among the benefits which he received under the will were some very valuable chattels settled so as to devolve with the settled land as heirlooms. These chattels included a collection of pictures and the famous blue diamond known as the "Hope" diamond. On the death of Lord Francis without issue, the estate was limited to his eldest sister for life, with remainder to her first and other sons in tail male, with divers remainders to other members of the family. In 1895 Lord Francis became bankrupt. He made three separate applications for an order to sell the heirlooms. The first was made in 1893, before his bankruptcy, when he still enjoyed an income of £10,000 a year. On this occasion the members of the family interested in the settlement opposed an application to sell the pictures, and Chitty, J., deferred to this opposition and refused an order, largely on the ground that the applicant's difficulties were of his own making and that such a circumstance was not one which ought to have weight in deciding in his favour. By 1898, when the second application for the sale of the pictures was made, the applicant's life interest under the settlement was vested in trustees for the benefit of his creditors and the family had withdrawn their opposition. Romer, J., accordingly made an order for the sale of the collection and for investment of the purchase money, at the same time ordering that £600 per annum should be paid thereout to Lord Francis' eldest sister for the maintenance and education of her eldest son—a striking exercise of the judicial discretion when the limited purposes for which "capital money arising under this Act" may normally be applied are considered. The third application, made in 1899, was for an order to sell the Hope diamond. Once again the other members of the family interested in the settlement opposed the application, and although the applicant's personal income had by then been reduced to £2,000, the application was refused, and on appeal the exercise of the judge's discretion was upheld.

This case shows clearly that the interests of those entitled in remainder carry considerable weight with the court in considering an application for a sale under s. 67. In this case all the persons of full age interested in the settlement (with the exception, of course, of the applicant himself) were unanimous in their opposition on two occasions, and everybody of one mind in supporting the application on the other occasion. Where there is no such unanimity the weight to be given to the wishes of a single remainderman must depend to some degree on his chances of succession In the normal case, moreover (and for this purpose *Re Hope* cannot be regarded as normal owing to the applicant's exceptional extravagance), the wishes of the tenant for life himself are given every consideration.

The proceeds of sale of heirlooms must be paid to the trustees of the settlement and can be invested or applied in accordance with the general rules relating to capital money. A particularly useful application, the present rates of estate duty being what they are, is in discharge of incumbrances on the land in conformity with the trusts of which the heirlooms are settled. If the court makes an order for sale, but makes no order as to the application of the purchase money, the trustees have a free discretion, within the limits imposed upon them by law, as to the purposes to which it may be applied; but this is rare, as the proposed mode of application is one of the circumstances which is almost invariably considered at the hearing of the application for an order, and a not unusual form of order is that in *Re Duke of Marlborough's Settlement* (1885), 32 Ch. D. 1. The order for sale included an undertaking by the tenant for life not to invest the proceeds of sale without further order, and to seek the directions of the court on the ultimate destination of the proceeds of sale. In this way complete control is exercised by the court throughout the transaction.

Moreover, the courts have not been slow to sanction methods of application of the proceeds of sale of heirlooms which are not, *prima facie*, included in the Act. Acting on the analogy of the power conferred by the Act to apply the proceeds in the purchase of other chattels to be settled on trusts similar to those of the chattels which have been sold, the court has given the tenant for life liberty to apply such proceeds in the repair and renovation of chattels which have been retained on the trusts of the settlement (*Re Waldegrave* (1899), 81 L.T. 632); or in the expenses incurred in removing such chattels as have been retained to another mansion house (*Browne* v. *Collins* (1890), 62 L.T. 566). These instances of the application of the proceeds of sale of heirlooms for purposes totally unconnected with land are not only a very interesting example of the wide manner in which the courts have exercised their discretion in these cases, but have a possible application outside the subject of heirlooms (as the term has been defined above) altogether.

By s. 130 of the Law of Property Act, 1925, entailed interests can be created in personalty without reference to

any settlement of land. Personalty so settled is not "heirlooms" in any sense of the word, and if it is sold during the subsistence of the settlement (as it may be at any time by the trustees with the consent of the usufructuary for the time being) the purchase money can only be invested by the trustees and the investments held on the same trusts as originally affected the personalty which has been sold (s. 130 (5)). If, therefore, personal chattels are held on trust for any persons in tail under a settlement created since 1925 the trustees have, strictly, no power to sell part of the chattels and employ the proceeds of sale in, for example, renovating the remainder, nor has the court power under the terms of s. 130 to sanction such a transaction. But I conceive that an application to the court under s. 57 of the Trustee Act, 1925, for power so to deal with chattels, supported by the analogous decisions in cases like *Re Waldegrave, supra*, would be successful. Such cases are doubtless rare, for cases of entailed interests in pure personalty are uncommon. But life interests in personal chattels created by will are anything but rare, and although the chain of connection between heirlooms on the one hand and personal chattels settled for life on the other is a long one, there seems to be no reason why analogous principles should not, at the discretion of the court, be applied to both. The value of a house full of chattels and the cost of keeping them in proper order are both at present so enhanced that trustees of a will or other similar settlement may well desire (with the consent of the life tenant) to dispose of some of the chattels in order to provide for necessary expenditure on the remainder. When, for one reason or another, the consent of all the persons interested in the settlement cannot be obtained, an application to the court is requisite. Such an application, made under s. 57 of the Trustee Act, should meet with no difficulties if the analogous decisions in the heirlooms cases are cited in support.

LANDLORD AND TENANT NOTEBOOK

USE AND OCCUPATION: DEFENCES

An action for use and occupation is an action for damages for breach of contract, and in most cases the whole or part of the contract is of the "implied" variety. It is also most frequently brought in cases in which the parties have been in negotiation for a tenancy; and sometimes the negotiations have been broken off, sometimes they have produced agreement which has been repudiated. In this article I propose to discuss the position of the intended tenant in two kinds of cases, namely those in which the intended landlord will not, and those in which he cannot, proceed. Does his refusal in the one case, his inability in the other, afford the intended tenant a defence?

It is only in the case of refusal that the defendant's position may have to be considered in the light of further facts, namely whether agreement was reached or not. I mention this because there is a tendency to speak of "things going off through the default of...." when the person named declined to proceed, irrespective of whether agreement had been attained or not. We are dealing with implications, i.e., with facts to be inferred from other facts, the facts to be found being states of mind; and I think that such a decision as that in *Coggan* v. *Warwicker* (1852), 3 Car. & K. 40, warrants the proposition that the intended tenant will have no answer to a claim in these circumstances. The plaintiff in that case let the defendant into possession of a warehouse on his agreeing to sign "the agreement which Mr. P was to draw up." Apparently, the length of term had not been discussed. Mr. P's first draft made it seven years; the defendant said this was too long; the plaintiff offered to make it five years, to which the defendant agreed, and a revised draft was prepared; the defendant refused to sign this, and the plaintiff turned him out. The plaintiff was held none the less to be entitled to damages for use and occupation, for he had let the defendant into possession on the faith of what Erle, C.J., called "the" intended agreement. It may well be objected that, as the learned chief justice phrased this part of his judgment, he begged the question; but, looking at the matter broadly from the point of view of implied agreement, one does arrive at the conclusion that the defendant took the risk of not coming to terms with the plaintiff for a tenancy of the latter's land and it was contemplated by them, when possession was taken, that the defendant would pay for its use in any event. The question what is the position when, after negotiations have produced agreement, the plaintiff refuses to complete, is more difficult. *Rumball* v. *Wright* (1824), 1 C. & P. 589, is sometimes cited as authority for the proposition that if the lease goes off through "the default" of the intending lessor, his action for use and occupation must fail. But this proposition is rather wide, for the case was one in which the plaintiff was unable, rather than unwilling, to make title. The plaintiff had negotiated without considering the existence of, or possible refusal to join in of, another interested person, and the decision against him does support the proposition that in such cases he is not entitled to claim for use and occupation. But here again, if one remembers the nature of the action, the result is in no way startling. The defendant, it is true, had had some benefit from his occupation (he had in fact drawn rent from sub-tenants); but the implied promise to pay can be considered dependent on an implied assurance of competence to grant what has been promised. Consistent with this authority are the decisions in *Cobb* v. *Carpenter* (1809), 2 Camp. 13*n*, and *Harris* v. *Booker* (1827), 4 Bing. 96; in the one, the plaintiff had not let the defendant into possession, but had acquired first the equitable, and then the legal, estate in the property, and it was held that damages must be assessed as from his acquisition of the legal estate; in the other, a *cestui que trust* whose trustees had permitted him to receive rents was held not to be entitled to damages for use and occupation against an occupier.

In those cases nothing was heard about estoppel, which has played a part in later decisions. In *Evans* v. *Evans* (1838), 3 A. & E. 132, the plaintiffs, a firm of auctioneers, let some fields to the defendant by a document which stated that the rent was to be paid into their hands or to their order, and which contained a footnote running "approved by me, D.J." There was dispute about the agreement between D.J., who was tenant of the fields, and the plaintiffs, but it was held that in any event an auctioneer disclosing the identity of his principal could not sue for use and occupation. The contract was made with D.J. But in *Fisher* v. *Marsh* (1865), 6 B. & S. 411, the plaintiff, an auctioneer instructed by a committee managing a race meeting then held annually on Port Meadow, Oxford, let a site for a booth or stall to the defendant. The handbills announcing the auction did not name any principals, and the defendant sought to establish that he had a title to the land as a freeman of the city and consequently commoner of the meadow. This he was not allowed to do, in view of the contract made; and it was further held that there was evidence (though the existence and identity of the principal were known) of a contract between the parties personally, so that an action could be brought by the plaintiff for use and occupation.

At first sight, it may seem difficult to reconcile the last-mentioned decision with that in *Rumball* v. *Wright* and with the others referred to in my third paragraph. But the difficulty is, I think, resolved when one considers that the so-called doctrine of estoppel is nothing but a rule of evidence by which a court is prevented from considering certain facts and that there was no question in *Fisher* v. *Marsh* (or, for that matter, in *Evans* v. *Evans*) of possession having been taken with a view to some agreement being either concluded or implemented. The actions, though styled actions for use and occupation, were brought on express contracts. A further example of the operation of estoppel in such circumstances

was afforded by *Dolby* v. *Iles* (1840), 11 A. & E. 132, when the defendant, having paid rent to, and obtained a reduction of rent from, trustees, was not allowed to prove their absence of title.

These cases do not impugn the validity of the proposition that if it is open to the defendant to show that the plaintiff was not entitled to let him into possession, the claim for use and occupation, however beneficial such use and occupation may have been to the defendant, must fail. This, I have suggested, is consistent with the essential nature of such an action as one brought on an implied contract. When, however, an intending landlord with a good title lets an intended tenant into possession pending completion, and then refuses to complete in circumstances which make him liable for specific performance or damages or both, has he any right to compensation for the use and occupation enjoyed? As far as I know, there is no direct authority on this point; it has been held that an intending purchaser who refuses to complete in such circumstances is liable (*Hall* v. *Vaughan*, (1819), Peake 254*n*) but no case in which a landlord was the defaulter has yet been reported. I submit that what authority there is warrants the proposition that in respect of any period before the parties may have been *ad idem*, the tenant would be liable, having taken the risk (*Coggan* v. *Warwicker*, *supra*) of negotiations failing; but that once there was a valid agreement for a lease, the implied obligation to pay for use and occupation would be subject to an implied willingness to grant the negotiated lease.

TO-DAY AND YESTERDAY

August 4.—When the House of Lords rejected the Reform Bill riots broke out in many places. At Marketon a mob attacked the house of Mr. Mundy, M.P. for the County of Derby, smashing the doors and windows. With his son, his nephew and nine servants, besides some men from the village armed with pitchforks and summoned by an alarm bell, he prepared to defend his home, and the rioters retreated on seeing the outside reinforcements. He brought an action to recover compensation from the Hundred of Morleston and on 4th August, 1832, obtained a verdict at Derby Assizes.

August 5.—In 1839 there were serious Chartist disturbances. A convention elected by public meetings and intended to rival Parliament held its first sitting in London in February. A petition signed by over a million people was presented to the Legislature as an ultimatum and a general strike was planned. The troubles were particularly dangerous in Birmingham, whose Member of Parliament was a Chartist leader, and in July a succession of meetings of ever-increasing violence was held, chiefly in the Bull Ring. At last the magistrates sent for a force of sixty of the newly established London Metropolitan Police to keep order on market day. There was a pitched battle in which several of the constables were wounded by stones and two were stabbed. On the next day thousands of handbills were posted up everywhere declaring that the convention had passed a resolution against the "wanton, flagrant and unjust outrage upon the people of Birmingham by a bloodthirsty and unconstitutional force from London." On 5th August John Collins, who was responsible for the publication of the leaflets, was tried for libel at the Warwick Assizes. He was convicted and condemned to a year's imprisonment.

August 6.—Assizes and Quarter Sessions were formerly social as well as legal occasions. On 6th August, 1800, Parson Woodforde noted in his diary: "Mrs. Custance and eldest daughter, etc., went to Assize Ball at Norwich this evening."

August 7.—John Reeves had a varied legal career. He was called to the Bar in 1779 and became a Commissioner of Bankrupts in the same year. He was appointed Chief Justice of Newfoundland in 1791. By contrast he became King's Printer in 1800, and he was Superintendent of Aliens from 1803 to 1814. He was elected a Bencher of the Middle Temple in 1824 and died on 7th August, 1827, being buried in the vault of the church. He found time to write on historical, legal and other subjects.

August 8.—On 8th August, 1896, Sir Frank Lockwood sailed from Liverpool for New York in the *Umbria* to attend the nineteenth meeting of the American Bar Association at Saratoga Springs. His biographer, Augustine Birrell, remarks: "To leave Liverpool on the 8th August in order to keep an appointment at Saratoga Springs on the 19th is one of those triumphs of motion we have ceased to celebrate; indeed, so fond are we of grumbling, that we may be found gloomily inquiring whether what was said at the nineteenth meeting of the American Bar Association was any better worth hearing than would have been the case had it taken three months to get there."

August 9.—Thomas, second Baron Denman of Dovedale, fourth son of Lord Denman, C.J., died suddenly of heart failure at the King's Arms Hotel, Berwick-on-Tweed, on 9th August, 1894. He had been called to the Bar by Lincoln's Inn in 1833, and for eighteen years acted as associate to his father during his judicial career. Succeeding him in the title in 1854, he regularly attended the House of Lords year after year, bringing in Bills to secure (1) female suffrage, and (2) limitation of the duration of speeches in the Upper House. They never reached even a second reading.

August 10.—One of the early mentions of Gray's Inn occurs in the Exchequer Issues Roll dated 10th August, 1417, and relates to a payment by Lord Talbot's attorney "manente apud Grayes Inne."

£10,000 a Year

In a recent speech in the House of Lords, Viscount Simon asked, apropos of the question of obtaining first-class men to manage nationalisation schemes: "What is the good of offering men £10,000 a year salary if, after you have paid it, by this system of taxation practically all of it is taken back?" In this connection it may not be out of place to recall a story which Viscount Simon himself has related. When the first Lord Russell of Killowen was appointed Lord Chief Justice, the Prime Minister, Lord Rosebery, rode over to his seat, Tadworth Court, to congratulate Lady Russell. She thanked him but added that she had hoped that her husband might be the first Roman Catholic Lord Chancellor since the Reformation. The Prime Minister, however, assured her that she was much mistaken in preferring the Woolsack to the Chief Justiceship, which was an office held for life and not dependent on a change of Governments. "A Lord Chancellor," he told her, "may hold a splendid office as long as it lasts, which is not usually very long, but an ex-Lord Chancellor is nothing but a shabby old gentleman with £5,000 a year." That being so in the golden age of Victoria, it seems far from inapposite that in the penurious present the £10,000 a year man should be classed in the same melancholy category.

Middle Temple Library

A daily paper, referring to the plans for the new Middle Temple library, came out with the truly remarkable statement that "the old one, designed by Wren, was destroyed by enemy action." In fact the old library was, as Theobald Mathew acidly observed, "a perpetual and disagreeable reminder that Lord Westbury had a brother-in-law who was an architect." (Its ecclesiastical Gothic sorted well with the Law Courts on the other side of the Strand.) As a matter of fact, our late enemies did not actually save the Inn the trouble of demolition. Their efforts succeeded in blasting the building, rendering it a dangerous structure and damaging many books, but the actual pulling down has been a civilian effort and, even now, is only half completed. The new building designed by Mr. Edward Maufe is to occupy approximately the same site facing the river. Roughly it is in Somerset House style and is exceedingly handsome and dignified. It ought to be a perpetual encouragement to the benchers to seize the earliest opportunity of getting rid of the monstrous Victorian indiscretion called Temple Gardens and at any rate the south (mock-Elizabethan) end of Paper Buildings ("Blotting-Paper Buildings" to those who first saw them). The new library is of a design which might well form the basis of the entire Temple river front. The old library was opened by the Prince of Wales on 31st October, 1861, in the presence of a distinguished company which included the Duke of Cambridge, Lord Brougham and, of course, Lord Westbury. The architect was H. R. Abraham. Those were the pre-Embankment days and the windows of the then new building overhung the Thames. In the Treasurership of the late Lord Reading, a presentation was made to the library porter after fifty years of service. The recipient was the last of the line of Ing, which had been with the Inn since 1828, and was great-grandson of the first of his family to work for it. He recalled that as a small boy he was sometimes brought by his father to the library and given crumbs to throw to the ducks from the window.

COUNTY COURT LETTER

Liability for Dental Repairs

In *Browning* v. *Brabington-Perry and Laight*, at Boston County Court, the claim was for £21 14s. for work done. The plaintiff was a dental mechanic, and his case was that for some years the second defendant (a dentist) had employed him to do dental repairs. Orders were sent to the plaintiff on printed forms, ten of which were used between 27th August and 19th September, 1945. The work done was not paid for by the second defendant, on the ground that he had sold his practice on the 31st August to the first defendant. The liability was denied by the first defendant on the ground that, having his own mechanics on the premises, he had given instructions that no work was to be sent out to the plaintiff. The plaintiff contended that he was entitled to succeed against both defendants. The first defendant's case was that the items claimed related to outstanding work for the second defendant, originating before the sale of the practice. The second defendant's case was that the items related to fresh work, originating since the sale. His Honour Judge Shove gave judgment for the plaintiff against the first defendant, with costs, and for the second defendant against the plaintiff, with costs. An application that the first defendant should pay the second defendant's costs was refused.

Repairs to Billiard Table

In *Edic* v. *Rodkel, Ltd.*, at Canterbury County Court, the claim was for £18 10s. as the price of repairs to a billiard table. The counter-claim was for £25 as damages for breach of contract. The plaintiff's case was that he re-covered the table with a second-hand cloth, selected by the defendants. As an ex-professional player, he was satisfied with the result. The defendants' case was that there were pleats round the cushion, balls fell through the pockets, and a nail was found in the cloth. In the defendants' billiards hall at Herne Bay their regular customers would not play on the table. The counter-claim represented the loss of profit owing to disuse of the table. His Honour Judge Clements gave judgment for the plaintiff for £18 10s., and for the defendants on the counter-claim for £8, they having accepted the cloth and used the table for some time.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Taxation of Residuary Legatee

Q. By his will A devised his residuary estate to B for life with remainder over. Owing to the involved condition of the estate it was not possible for the executors to make any payment of income to B for about two years, and H.M. inspector of taxes has raised assessments under Sched. A on the executors for that period on the ground that residuary legatees are not entitled to be regarded as being in receipt of any income which arises from the estate of the deceased prior to the date of ascertainment of the residue, until the date of actual receipt by the residuary legatee. As the assessments in question are considerably greater than B's liability, information would be appreciated as to the correctness of H.M. inspector's contention, and particularly whether B can strictly be regarded as a residuary legatee.

A. The Inland Revenue are correct in their ruling that, as the residuary legatee has not actually received anything from the estate, the income cannot yet be treated as his income for tax purposes. The Finance Act, 1938, made substantial changes in the taxation treatment of residuary legatees. The rules under which the income of the estate of a deceased person during the period from the death until the date of ascertainment of the estate was previously treated for tax purposes as the technical income of the trustees, and not that of the beneficiaries, were amended. The main principle is that, subject to certain provisions, as far as an income has been paid it is treated as the income of the beneficiary for the year in which it is paid, with subsequent adjustments for each year when the estate has been ascertained. The time limit is extended for this purpose to the end of the third year after the year of assessment in which the administration is completed. It seems probable that in the present case, although the Inland Revenue have raised Sched. A assessments on the executors for the past two years, there will be an adjustment to be made later on completion of the estate. We suggest that an inquiry should be addressed to the Inland Revenue on this point. If the Inland Revenue ruling is that there is to be no eventual adjustment, they should be asked to state under which provision in the Acts they are proceeding.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Appropriation and Stamp Duty

Sir,—We have been much interested in the article under this heading in the "Conveyancer's Diary" appearing in your issue of the 12th July from which it would seem that on the division of a testator's residuary estate where investments are transferred to the ultimate beneficiaries in specie, stamp duty is payable *ad valorem* under the decisions in the cases of *Re Lepine* [1892] 1 Ch. 210, and *Re Beverly* [1901] 1 Ch. 681, referred to by the learned author of the article in question.

We have always been under the impression that where the investments representing a testator's residuary estate or a trust fund under a settlement are being transferred on the winding up of an estate or trust to the ultimate beneficiaries under a scheme of division, duty is payable at the fixed rate of 10s. only, and we have had no hesitation in signing the certificate on the backs of the transfers certifying that they were transfers to residuary legatees of stock forming part of the residue divisible under a will, or to beneficiaries under a settlement on distribution of the trust funds of stock forming the shares or part of the shares to which the beneficiaries respectively are entitled.

It would rather seem from the article in question that we were not in order in doing this, but if this is the case we do not understand under what circumstances we should be justified in giving the certificate in question, and we should be very interested to know under what circumstances the learned author of the article considers that the above form of certificate is appropriate.

Chancery Lane, W.C.2. HAWES AND UDALL.

[The author of the "Diary" of 12th July writes: I do not consider that *ad valorem* duty is payable on the final distribution, if the parties go the right way about it. The issue of the liability lies in the transaction being a sale. Sometimes the trustees are allowed to deal with the distribution themselves, with the consent of the beneficiaries. That does involve a sale of each particular asset, in specie, to a beneficiary, and the payment therefor by the beneficiary with his share of notional proceeds of sale. If it is that which is done, duty is leviable *ad valorem*. But the proper course is for the beneficiaries, all being, by definition, absolutely entitled and *sui juris*, to exercise their joint right as absolute and beneficial owners by directing the trustees that they are not to sell and that they are to distribute the property in specie. This direction can be done by deed, and if so, would attract a 10s. stamp. But I usually have it done by a notification under hand, which attracts no stamp at all. Any consequential conveyances require 10s. stamps.]

Repeal of Duties on Legal Profession

Sir,—I am surprised that the "Current Topic" in your issue of the 26th July under the above heading makes no reference to The Law Society's exertions in securing the remission of the unfair taxes on the profession. Every solicitor will benefit throughout the remainder of his professional career, and all should know that the concessions were the result of repeated representations by the Council, in which the then President, Sir Douglas Garrett, played no small part. The Council cannot always achieve success in their efforts, but, when they do, those efforts should be given proper acknowledgment.

Bromley, Kent. "QUANTUM MERUIT."

[THE SOLICITORS' JOURNAL is happy to acknowledge the prominent part played by the Council of The Law Society in bringing these reforms about. The then President's speech at the Society's Annual General Meeting announcing the reforms, and describing the Council's efforts in securing them, was reported in our issue of 12th July (pp. 382–3, *ante*). A further Topic on this subject appears at p. 425, *ante*.]

REVIEWS

Bell's Sale of Food and Drugs. Twelfth Edition. By R. A. ROBINSON, O.B.E., of the Middle Temple, Barrister-at-Law. 1947. London: Butterworth & Co. (Publishers), Ltd. 30s. net.

It is three years since the 11th edition of Bell was published. This work is too well known and respected to need any fresh commendation; suffice it to say that the new edition worthily upholds its universal reputation on this very complex subject which, with adulteration and other offences in respect of food still encouraged by shortages, remains of great importance for the protection of the public.

The new edition brings the law down to 19th December, 1946, and includes various orders not included in the last edition, particularly the important Labelling of Food Order, 1946, the net result being an expansion by some seventy pages. The same plan is followed as before, Part I containing the annotated Acts and Part II the Regulations and Orders, and there are three Appendices of Government Circulars, Chemical Notes and Specimen Forms. It would assist easy reference if the Summary of regulations and orders at the beginning of Part II were to detail the miscellaneous provisions and orders in Groups VI and VII; and the Labelling of Food Order, 1946, might well be connected with the Ministry of Food notices on Food Labels and Advertisements and the Labelling of British Wines, reprinted in Appendix I; these were issued in connection with and refer to the Labelling of Food (No. 2) Order, 1944, as amended. This is not reprinted, having been replaced by the 1946 order, though parts of it remain in force up to various dates, the last of which is 1st January, 1948.

The book will no doubt find its place in the libraries of all who have to operate in this branch of the law, for it is indispensable to them. Provision is made for keeping it up to date by means of supplements.

Chalmers' Bills of Exchange. Eleventh Edition. By FRANCIS RALEIGH BATT, LL.M., a Judge of County Courts. 1947. London: Stevens & Sons, Ltd., and Sweet & Maxwell, Ltd. 35s. net.

A digest in name, the new edition of this deservedly famous book has been noted up with all the relevant cases reported since the appearance of the last edition in 1932. Sir Mackenzie Chalmers' labours, however, resulted not only in a digest but also in a brilliantly successful experiment in statutory codification embracing the law relating to one of the most beneficial inventions of the law merchant, an invention which, in a changing world, shows no sign of decay. Consequently, practitioner and student alike have long found reference and study facilitated by the author's arrangement of the material in propositions which later came to correspond with the sections of the Act, accompanied by appendant notes and a wealth of illustration from decided cases, the whole set out with the aid of a judicious differentiation of type. The cross-references throughout are to sections of the Act where appropriate, and while this feature no doubt helps the student's memory and touches chords in that of the practitioner, an additional reference to the page of the book would have been helpful. Alternatively, in a future edition, a running marginal note of the section being considered on each page would meet the point.

The author had the great writer's gift of covering without condescension the elementary preliminaries of his argument. An example of this felicity of treatment may be seen in the passage on Consideration (pp. 82–105) where the general law and the provisions special to the subject are related by means of a series of notes and rules both readable and exhaustive.

The book is excellently produced. Some may think that the sub-headings in the index would have been better arranged alphabetically and that the pages of the author's absorbing historical introduction might have figured individually in the index. But indexing is a matter of taste, and the use of an index a matter of habit quickly acquired. The page-heading on pages 296–300 has obviously gone astray. These *minutiæ* in no way detract from the general excellence of the book. We venture to think that His Honour Judge Batt is well-founded in the belief which he expresses in his preface that this commentary of the draftsman on what the late MacKinnon, L.J., regarded as the best drafted Act of Parliament ever passed provides the best text-book on the subject.

OBITUARY

HIS HONOUR JUDGE LEIGH

His Honour Thomas Bowes Leigh, County Court Judge of Circuit No. 8, Manchester, from 1925 to 1942, died on 29th July. Born in 1867, he was called by the Middle Temple in 1901, and from 1921 to 1925 was Recorder of Burnley. He was appointed Chairman of the Manchester rent tribunal last year.

MR. E. E. RUSTON

Mr. Ernest Edward Ruston, solicitor, of Chatteris, Cambridgeshire, died on 24th July. He was admitted in 1896.

Mr. D. SAMSON

Mr. David Samson, solicitor, of Messrs. Mackenzie and Kermack, W.S., of Edinburgh, died on 26th July, aged eighty-two.

MR. W. H. THOMPSON

Mr. William Henry Thompson, solicitor, of Chancery Lane, W.C.2, and High Wycombe, Buckinghamshire, died this week. He was admitted in 1908 and was well known as an expert on workmen's compensation, in which he had an extensive practice. He was solicitor to a number of large trade unions.

NOTES OF CASES

COURT OF APPEAL

Hyett *v.* Great Western Railway Co.

Tucker, Somervell and Evershed, L.JJ.
2nd July, 1947

Negligence—Fire on premises—Invitee injured in endeavouring to extinguish—Liability.

Appeal from a decision of Hilbery, J., given at Newport Assizes.

The plaintiff sued the Great Western Railway Company for damages for negligence in respect of an injury which he suffered on railway sidings at Gloucester. He was employed by a company whose business was the repair of privately owned wagons. On the 5th March, 1945, a privately owned wagon was on the sidings. The plaintiff, in the course of his duty to his employers, was repairing it. When going off duty, with another man, he saw smoke coming from a wagon belonging to the railway company on the same sidings. The wagon contained drums of paraffin oil, and the men found flames on the floor. Seeing that the fire was getting out of control, the plaintiff tried to remove some of the drums from the truck. As he was doing so, a drum which he was handling exploded owing to the heat from the fire, and he received injuries. In his action against the railway company the plaintiff contended that the company were invitors and had failed to take reasonable steps to secure the safety of the premises upon which he was working at their invitation. Hilbery, J., held that he was a licensee, the railway company calling no evidence. On this appeal by the plaintiff the Court of Appeal held, on certain evidence not brought to the notice of the trial judge, that the plaintiff was an invitee.

TUCKER, L.J., having reviewed the evidence, found that, knowing of the existence of the leaking paraffin, the railway company had failed to take reasonable steps to secure the safety of the premises on which the plaintiff was working, and said that, subject to the question of the break in the chain of causation, he would hold that the plaintiff had established his cause of action. With regard to the *novus actus interveniens*, the position was summarised by Greer, L.J., in *Haynes* v. *Harwood* [1935] 1 K.B. 146, at p. 156, where he said that if what was relied upon as *novus actus interveniens* was the very kind of thing which was likely to happen if the want of care alleged took place, the principle embodied in the maxim was no defence. In *Steel* v. *Glasgow Iron & Steel Co.* [1944] S.C. 237, at p. 251, the Lord Justice Clerk held that the plaintiff's intervention "was reasonable and justifiable and a natural and probable consequence of the defender's negligence which ought reasonably to have been foreseen." Those were the tests to be applied to the facts of any particular case. It was, no doubt, material to consider in every case whether it was life or property which was in danger, and the relationship of the plaintiff who intervened to the property or to the person in peril. His (his lordship's) conclusion was that, in the case of a man working as of right on premises, it was natural to anticipate that, if he saw a fire starting there, then, whether or not the property of his employers was in immediate peril, he, as a reasonable man, would take the necessary steps to put it out. None of the steps taken by the plaintiff was unreasonable or such as not to be anticipated as likely to follow in the case of a fire, or, therefore, a *novus actus interveniens* breaking the chain of causation. The appeal succeeded.

SOMERVELL and EVERSHED, L.JJ., agreed.

COUNSEL: *Beney*, K.C., and *Salter Nichols*; *Melford Stevenson*, K.C., and *Hutton*.

SOLICITORS: *Rowley, Ashworth & Co.*; *M. H. B. Gilmour.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

***In re* Coats' Trust**

Jenkins, J. 16th July, 1947

Trust—Charitable trust—Convent of contemplative nuns—No external activities—Efficacy of conventual prayer in conferring benefits on the public—Efficacy of cloistered life as a means to public edification—Whether such institution charitable.

Summons.

By a declaration of trust a sum of money was given to trustees to be held " upon trust if the purposes of the Roman Catholic community situate and known as the Carmelite Priory, St. Charles Square, Notting Hill, are charitable, to apply the income of the trust fund to all or any such purposes . . . but if the purposes of the said community are not charitable, then upon trust to apply the trust fund to all or any of the purposes of the Converts' Aid Society . . ." The trustees took out this summons to ascertain whether the purposes of the convent referred to were or were not charitable within the legal definition of charity, the Prioress of the convent and the trustees of the Converts' Aid Society being made defendants. Evidence was given in affidavits made by the Prioress and the Cardinal Archbishop of Westminster to the effect that the convent comprised an association of strictly cloistered and purely contemplative nuns, who performed no works and engaged in no activities whatever for the benefit of anyone outside their own association, devoting themselves entirely to worship, prayers and meditation within the convent, but who were regarded in the belief and teaching of the Roman Catholic Church as causing, by means of such private worship, prayers and meditations, the intervention of God to bring about the spiritual improvement of members of the public, both Catholic and non-Catholic, and also as providing an example of self-denial and concentration on the life of the spirit tending to the spiritual edification of such members of the public.

JENKINS, J., said it had been decided in *Cocks* v. *Manners* (1871), L.R. 12 Eq. 574, that a community of contemplative nuns, who performed acts of devotion in complete seclusion, was not a charitable institution in the legal sense. That case had been considered and applied in a large number of subsequent cases. (*In re Joy* (1888), 60 L.T. 175; *In re White* [1893] 2 Ch. 41; *In re Macduff* [1896] 2 Ch. 451; *In re Delany* [1902] 2 Ch. 642; *Dunne* v. *Byrne* [1912] A.C. 407; *Chesterman* v. *Federal Commissioner of Taxation* [1926] A.C. 128; *In re Williams* [1927] 2 Ch. 283; *In re Barclay* [1929] 2 Ch. 173; *In re Ward* [1941] Ch. 308; *Commissioners of Charitable Donations* v. *M'Cartan* [1917] 1 I.R. 388; *Munster & Leinster Bank* v. *A.-G.* [1940] I.R. 19; and *In re Keogh* [1945] I.R. 13 were referred to.) On the other hand, in two recent Irish cases (*In re Howley* [1940] I.R. 109 and *In re Maguire* [1943] I.R. 238) it had been held that the decision in *Cocks* v. *Manners*, based on an assumption of fact that the existence of a cloistered and contemplative community did not tend to public edification, had no applicability in Ireland, where such communities were a powerful source of general edification. It had been contended for the Prioress (1) that the evidence on which *Cocks* v. *Manners* was decided was incomplete, in that it failed to indicate (*a*) that the prayers of the community were intended to benefit the outside public; (*b*) that it was a Roman Catholic belief that such prayers stimulated divine intervention to effect a spiritual improvement in the public; (*c*) that the example of self-denial and spiritual life tended to the edification of the public; (2) that in considering such matters the court must accept as true the beliefs of the community concerned; and (3) that if the objects of a society were charitable, the motives of its members were irrelevant. But there was nothing abstruse in the propositions on which the first contention was based, and they could not be considered as having been absent from the mind of Wickens, V.-C., when he decided *Cocks* v. *Manners*, or from the minds of the many high authorities who had followed him. The second proposition went too far; to accept it would mean that a cloistered community which believed that its prayers were efficacious externally would be charitable, while a community which did not so believe would not; the true principle was that the court would assume in any particular case that the advancement of the religion concerned was beneficial without inquiring into its truth or soundness, provided that it was not immoral or illegal (*O'Hanlon* v. *Logue* [1906] 1 I.R. 247; *In re Caus* [1934] Ch. 162). The third proposition was true enough, but was only relevant when the objects of the particular society (as opposed to the motives) were charitable. The wide definitions of religious charity contained in *Keren Kayemeth Le Jisroel* v. *Commissioners of Inland Revenue* [1931] 2 K.B. 469, could not be held to include the promotion of the teachings of a religious sect within a closed circle of cloistered nuns. The recent Southern Irish decisions, based on a local state of facts, could not be regarded as authoritative in England. In view of these considerations, the decision in *Cocks* v. *Manners* was applicable in the case. Charity, for the purposes of English law, was concerned with human, as opposed to divine or supernatural, activities, and related only to such benefits as men could confer on their fellows by human agency. It followed that the purposes of the convent were not charitable.

COUNSEL: *R. R. A. Walker; G. Hewins; H. H. King.*

SOLICITORS: *Witham & Co.; Ellis, Bickersteth, Aglionby and Hazel.*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

R. *v.* **Croydon and District Rent Tribunal; *ex parte* Langford Property Co., Ltd.**

Lord Goddard, C.J., Macnaghten and Lynskey, JJ.
10th July, 1947

Landlord and tenant—Furnished letting—Rent control—Central heating and hot water—Allegation of collateral agreement to supply—Furnished Houses (Rent Control) Act, 1946 (9 & 10 *Geo.* 6, *c.* 34), *s.* 2.

Application for an order of certiorari.

By an agreement made in September, 1945, the applicant landlords let a flat to a tenant for three years from the 29th September, 1945, at £145 a year. The only covenant by the landlords was to pay the water rate. The tenant applied to the respondent rent tribunal under s. 2 of the Furnished Houses (Rent Control) Act, 1946, for a reduction of the rent, alleging that the flat came within the Act on the ground that there was a collateral agreement to supply central heating and hot water. In his evidence before the tribunal he stated that, before entering into the agreement, he saw the hot-water system in operation and a notice on the premises in reference to it and to central heating. He said that he would not have taken the flat at the rent which he was paying unless he had been certain that central heating and hot water would be supplied. The tribunal found a collateral agreement or warranty for the supply of central heating and hot water and reduced the rent to £126 a year. The landlords accordingly made this application to have the tribunal's order brought up and quashed. It was argued for the landlords that the tribunal had no jurisdiction to rectify the agreement by saying that there was an additional agreement or a warranty, and that unless there could be found in the contract a term by which the landlords had undertaken to provide hot water and central heating the tribunal had no jurisdiction. It was argued for the tribunal that in considering what the contract was they were not bound to look only at such part of it as was written, but must find out what the actual bargain was, and that, while the tribunal would have no jurisdiction unless there were an obligation on the landlords to provide services, the obligation need not be absolute, a limited obligation being sufficient to give jurisdiction.

LYNSKEY, J., giving the majority judgment, said that there was no express undertaking in the tenancy agreement to provide central heating and hot water. No implied obligation could or ought to be read into the agreement for such a provision, and there was no collateral agreement so to provide. It was not necessary, therefore, to express any opinion on the question whether, if a collateral agreement existed, it was a contract which came within s. 2 of the Act, or was a separate and independent contract which could not be referred to the tribunal. It was, moreover, impossible, as appeared from *R.* v. *Paddington & St. Marylebone Rent Tribunal* (*ante*, p. 310), to imply an agreement to supply hot water and central heating from the provision in the lease that the flat was let " together with . . . fixtures and appurtenances." In their opinion, there being no agreement for the provision of services, the letting could not be referred to the tribunal under the Act. The tribunal had no jurisdiction to reduce the rent, and the application must be granted.

MACNAGHTEN, J., said that, where a flat was put forward by a landlord, as was admittedly the case here, as one with central heating and constant hot water, the proper inference from the terms of the tenancy agreement itself was that there was on the landlords an implied obligation to provide central heating and hot water at times when they might reasonably be required. Consequently, the tribunal had jurisdiction under s. 2 of the Act of 1946 to entertain an application for the reduction of the rent.

COUNSEL: *Paull*, K.C., and *Heathcote-Williams; H. L. Parker.*

SOLICITORS: *Stikeman and Co.; Solicitor, the Ministry of Health.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

The next General Quarter Sessions of the Peace for the Borough of Walsall will be held at the Guildhall, Walsall, on Thursday, 14th August, 1947, at 10 a.m.

PARLIAMENTARY NEWS

ROYAL ASSENT

The following Bills received the Royal Assent on 31st July :—

ACQUISITION OF LAND (AUTHORISATION PROCEDURE) (SCOTLAND).
BRIGHTON CORPORATION (TROLLEY VEHICLES) PROVISIONAL ORDER.
CHESHIRE AND LANCASHIRE COUNTY COUNCILS (RUNCORN-WIDNES BRIDGE, ETC.).
CITY OF LONDON (TITHES).
CROWN PROCEEDINGS.
DUDLEY CORPORATION.
DUNDEE CORPORATION ORDER CONFIRMATION.
EDUCATION (EXEMPTIONS) (SCOTLAND).
FINANCE.
FIRE SERVICES.
HELSTON AND PORTHLEVEN WATER.
HOVE CORPORATION.
INDUSTRIAL ORGANISATION AND DEVELOPMENT.
INVERNESS BURGH ORDER CONFIRMATION.
KINGSTON-UPON-HULL PROVISIONAL ORDER.
LOCAL GOVERNMENT (SCOTLAND).
LONDON, MIDLAND AND SCOTTISH RAILWAY.
MARRIAGES PROVISIONAL ORDERS.
MEXBOROUGH AND SWINTON TRACTION (TROLLEY VEHICLES) PROVISIONAL ORDER.
MINISTRY OF HEALTH PROVISIONAL ORDER (GLOUCESTER).
MINISTRY OF HEALTH PROVISIONAL ORDER (LEEDS).
MINISTRY OF HEALTH PROVISIONAL ORDER (TORQUAY).
MINISTRY OF HEALTH PROVISIONAL ORDER (TUNBRIDGE WELLS).
NORTHERN IRELAND.
NOTTINGHAM CORPORATION.
PROBATION OFFICERS (SUPERANNUATION).
PUBLIC OFFICES (SITE).
SOUTHEND-ON-SEA CORPORATION.
STATISTICS OF TRADE.
SUNDERLAND CORPORATION.
TENDRING HUNDRED WATER AND GAS.
WELLINGTON MUSEUM.

HOUSE OF LORDS

Read Third Time :—

AGRICULTURE BILL [H.C.] [31st July.
ELECTRICITY BILL [H.C.] [31st July.
LONDON AND NORTH EASTERN RAILWAY BILL [H.C.] [30th July.
NATIONAL TRUST FOR SCOTLAND ORDER CONFIRMATION BILL [H.L.] [31st July.
PAISLEY CORPORATION ORDER CONFIRMATION BILL [H.L.] [31st July.
TOWN AND COUNTRY PLANNING (SCOTLAND) BILL [H.C.] [31st July.
TYNEMOUTH CORPORATION BILL [H.C.] [30th July.

HOUSE OF COMMONS

Read Third Time :—

COMPANIES BILL [H.L.] [28th July.

QUESTIONS TO MINISTERS

ALIENS (NATURALISATION APPLICATIONS)

In answer to a question by Mr. SORENSEN, the HOME SECRETARY said that from the resumption of naturalisation on 1st January, 1946, to 30th June, 1947, 13,415 certificates of naturalisation had been issued. Only 160 applications had been refused. His Department was now able to deal with about 1,600 applications a month. There had been, on 30th June last, 23,070 applications outstanding, and at the present rate of progress he hoped that all outstanding applications originating in the provinces would be disposed of early in 1948. As regards the Metropolitan area, however, where the majority of applicants lived, a much longer time must elapse, because the number of police officers available for the necessary inquiries was limited.

In a written answer to Major LLOYD, the HOME SECRETARY stated that, when further progress had been made in disposing of the arrears in naturalisation work, he proposed to announce a date from which it would be practicable to entertain applications from Poles who had been resettled in this country and had the statutory qualifications. [31st July.

STATUTORY INSTRUMENTS ACT (OPERATIVE DATE)

In a written answer to a question by Sir CHARLES MACANDREW, the FINANCIAL SECRETARY TO THE TREASURY stated that the Government now proposed 1st January as the date for the commencement of the Statutory Instruments Act. That date was recognised as most convenient for the public, and the technical difficulties which had been thought to make it necessary to choose, instead, the beginning of a Parliamentary session, had now been overcome. [1st August.

RULES AND ORDERS

S.R. & O. 1947, No. 1571

WAR DAMAGE

THE WAR DAMAGE (VALUE PAYMENT) (TIME OF PAYMENT) REGULATIONS, 1947. DATED JULY 23, 1947, MADE BY THE TREASURY UNDER SECTION 22 (1) (*b*) OF THE WAR DAMAGE ACT, 1943 (6 & 7 GEO. 6, c. 21).

The Treasury, in exercise of the power conferred upon them by paragraph (*b*) of sub-section (1) of Section 22 of the War Damage Act, 1943, hereby make the following Regulations :—

1.—(1) These Regulations may be cited as the War Damage (Value Payment) (Time of Payment) Regulations, 1947.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2. The time when payments may be made under Part I of the War Damage Act, 1943, in the case of value payments and of payments under Section Eighteen of the said Act shall commence on the 10th day of November, 1947.

Dated the twenty-third day of July 1947.

C. James Simmons,
Wm. Hannan,
Two of the Lords Commissioners of His Majesty's Treasury.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 1581. **Aliens** (Employment) Order. July 23.
No. 1552. **Coal Industry Nationalisation** (Liability Enforcement) (England and Wales) Regulations. July 21.
No. 1587. **Designs** (No. 2) (Neuchatel Agreement) Rules. July 24.
No. 1588. **Patents** (No. 2) (Neuchatel Agreement) Rules. July 24.
No. 1558. **Superannuation** (Compensation for Injury in Enemy Occupied Territory) Regulations. July 22.
No. 1551. **Supplies and Services** (Transitional Powers) Order in Council Amending Regulation 56AB of the Defence (General) Regulations, 1939. July 25.
No. 1571. **War Damage** (Value Payment) (Time of Payment) Regulations. July 23.

MINISTRY OF HEALTH

Local Government Financial Statistics, England and Wales, 1943–44. Summary.

NOTES AND NEWS

Honours and Appointments

The First Lord of the Treasury has appointed Mr. A. E. ELLIS to be First Parliamentary Counsel, with effect from 16th September, in succession to Sir GRANVILLE RAM, K.C., who has been appointed Deputy Chairman of the Statute Law Committee. Mr. JOHN ROWLATT has been appointed Second Parliamentary Counsel, with effect from the same date, in succession to Mr. Ellis.

The following appointments are announced in the Colonial Legal Service : Mr. A. R. BASTER to be Assistant Commissioner of Lands, Gold Coast ; Mr. E. W. L. M. CORBALLY to be Resident Magistrate, Nyasaland ; Mr. R. WINDHAM, President of the District Courts, Palestine, to be Puisne Judge, Ceylon ; Mr. J. WOODMAN, Chief Justice, Seychelles, to be Puisne Judge, Northern Rhodesia.

Wills and Bequests

Mr. W. W. Goddard, solicitor, of Stourbridge, Worcestershire, left £3,408, with net personalty £2,492.

Mr. H. W. Miller, solicitor, of Exmouth, left £38,101.

Mr. J. P. R. Pym, solicitor, of Belper, Derbyshire, left £41,489, with net personalty £39,272.